IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R. S .A. No. 3724 of 2007
Date of decision: 19.11.2007

Ram Wati ...Appellant

Versus

Brij Bhushan ...Respondent

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Arun Palli, Senior Advocate with
Mr. Jai Bhagwan, Advocate for the appellant.

Mr. Arvind Bansal, Advocate for the Caveator/respondent.

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RAJESH BINDAL, J.

Having lost in both the Courts below, the defendant is in appeal before this Court whereby suit filed by the respondent/plaintiff for possession by way of specific performance was decreed.

The claim set up by the respondent/plaintiff was on the basis of agreement to sell entered into between the parties on May 27, 1998 for selling land measuring 16 kanals for a total consideration of a sum of Rs. 1,40,000/- A sum of Rs. 70,000/- was paid as earnest money and due date for execution of sale deed was fixed as November 16, 1998. On failure by the appellant/defendant, the present suit for possession by way of specific performance was filed on April 16, 1999, which was decreed by both the Courts below. The thumb mark on the agreement to sell is not denied by the appellant/defendant. However, the same is sought to be explained by various circumstances which did not find favour with the Courts below. To wriggle out of the agreement it is pleaded that the appellant/defendant mortgaged two pieces of land with the respondent/plaintiff for a sum of Rs. l,00,000/- and Rs. 90,000/- respectively. The mortgage was redeemed on May 27, 1998 and on the same date land measuring 3 acres was sold by appellant/defendant to the respondent/plaintiff for a sum of Rs. 2,05,625/- to repay the debt. In case the appellant could execute the sale deed for three acres of land on May 27, 1998, the sale deed for the other part for which

merely an agreement to sell was executed on May 27, 1998 could very well be executed on the same date. The agreement was got thumb marked on that day in the process of execution of various documents for registration of sale deed.

The plea set up by the appellant/defendant was not accepted by learned Courts below for the simple reason that thumb mark on the agreement to sell was not disputed by her, rather plea of fraud was sought to be raised, which could not be proved. The agreement to sell was duly proved by the deed writer while appearing as PW1. It was further stated by him that entry of the agreement also finds mentioned in his register maintained in due course of his profession. The willingness of the respondent/plaintiff to get the sale deed executed has also been proved. Attesting witness of the agreement to sell namely, PW3 Jiya Lal, Lamberdar was also produced, who supported the agreement by stating that same was executed in his presence and the contents thereof were read over and explained to the appellant/defendant. The same was thumb marked by her after admitting the contents to be correct. He further deposed that Rs. 70,000/- was also paid in his presence. On appreciation of evidence, execution of the agreement to sell and the payment of earnest money was duly proved and plea of fraud set up by the appellant/defendant could not be proved. Merely because the appellant had executed a separate sale deed on the same date when the agreement was entered into will not lead to conclusion that the agreement to sell was a fraudulent document.

Even the plea raised by learned counsel for the appellant relying upon Section 20 of the Specific Relief Act also does not carry any weight for the simple reason that in the present case suit was filed immediately on the failure of appellant/defendant to execute of the sale deed on the date fixed for the same. Further the plea that the appellant will have to part with small portion of the land also does not carry any weight for the simple reason when she can sell three acres of land voluntarily on the same date when the agreement to sell was executed, such a plea of undue hardship cannot be accepted. This Court in **Jai Chand Vs. Bag Chand (2007-4) 148 Punjab Law Reporter 105**, in a case where agreement to sell was with regard to the house in which the vendors were living, did not find

the same to be case of undue hardship.

The findings recorded by the Courts below are plain and simple findings of fact recorded on appreciation of evidence, which cannot be in any manner be held to be perverse.

Accordingly, I do not find any substantial question of law arises in this appeal and the same is dismissed.

November 19, 2007 **(Rajesh Bindal)**
Pka **Judge**